

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPLICATION No.2377 of 2006

Smt Latabai Bharat Chandanshive

..Applicant.

Vs.

The State of Maharashtra ..Respondent.

Mr S.D. Nangre, Advocate for the Applicant.

Ms S.D. Shinde, APP for the Respondent No.1 -
State.

Mr S.R. Chitnis with D.C.Mishra, Advocate for
the Respondent No.2-accused.

CORAM: V.C. DAGA,J.

DATED: 25TH JULY, 2007.

P.C.:-

1. Heard learned counsel for the applicant
on the prayer made by him for cancellation of
bail.

2. The grounds invoked for cancellation of
bail are as under:

a] The order granting bail is based on the
concession given by the learned APP. In other
words, it was granted without getting report
of the Investigating Officer and without
hearing him.

b] That there is prima facie case against the
respondent-accused and sufficient material is
available on record to connect him with the

alleged offence.

c] That after releasing him on bail the respondent no.2 with his associates; namely, Sunita Ramesh Patil, Milind Shelar, Vikas Ramchandra Patil, Harish Patharkar, Yogesh Patharkar, Santosh Patharkar [Exh.F] threatened the complainant and other members of the victim family.

d] That prior application for cancellation of bail was rejected by this Court vide order dated 14.3.2006. The learned counsel for the applicant submits that the order of granting bail is liable to be cancelled for the reasons stated hereinabove.

3. He also pressed into service another judgment of the Apex Court in the case of **Puran vs. Rambilas, A.I.R. 2001 Supreme Court 2023; wherein, the Apex Court** ruled as under:

"Generally speaking the grounds for cancellation of bail broadly are interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. However, these instances are merely illustrative and not exhaustive. One such ground for cancellation of bail would be where ignoring material and evidence on record a perverse order granting bail is passed in a heinous crime of the nature like

bride giving be of a be that have Society. wrong trial
 burning any against justice perverse cancelled. such a very serious exercise of Court
 and reasons. principles would be set aside and bail must be remembered are on the rise and the
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 without would Interest such and bail be remembered and the
 Therefore, an arbitrary and the
 discretion by the correct.
 to be

4. Mr Chitnis, learned counsel appearing

for the respondent-accused submits that the
 bail was granted by the Sessions Court on the
 medical ground. He submits that when
 application for bail was rejected by the High
 Court that time the medical ground pressed
 into service was not available since the
 accused was not diagnosed as HIV positive. He
 submits that after rejection of the
 application by the High Court, the accused was
 diagnosed as HIV positive. In support of that
 he placed reliance on the certificate issued
 by A.R.T.Centre of J.J. Group of Hospital,
 Mumbai, which is established by the Municipal
 Corporation, Greater Bombay. The said
 certificate is dated 15.6.2006 . He further
 points out that the accused-respondent is
 required to attend J.J. Group of Hospital for
 periodical check up for taking further
 treatment. He further submits that the
 proceedings initiated under Chapter VIII
 particularly under Section 110 (e) and (g) of
 the Cr.P.C. initiated against him on the

basis of complaint made by the present complainant were quashed and set aside by the Division Bench of this Court vide order dated 5.9.2006 in Criminal Writ Petition No. 1606 of 2006. He, thus, submits that the story of having given threats by the present accused does not hold water. He further submits that if the bail is cancelled then the accused - respondent would be deprived of his right to take medical treatment. Under these circumstances, he submits that the application for cancellation of bail is liable to be rejected.

5. Having heard rival parties and having considered weight of the submissions advanced by both the parties and the evidence and other circumstances available on record, it is not in dispute that on the date when this Court rejected application for bail on 14.3.2006 the medical ground was never pressed into service since the said ground was not in existence. The accused-respondent at that point of time was not diagnosed for HIV positive.

6. The certificate issued by the Government Hospital does show that the accused-respondent is HIV positive. Document from Sir JJ Group of Hospital shows that he is taking treatment in the said Hospital and he is required to

report every month for medical check up and further treatment. It is also not in dispute that the Chapter proceedings were quashed by the order dated 5.9.2006 which is filed on record.

7. It is, no doubt, true that there is prima facie evidence against the present accused-respondent in connection with the offence alleged against him and that the bail was granted on the concession given by the learned APP appearing in the Sessions Court. On being asked for not contesting bail application; reply of the learned APP is that since the respondent is HIV patient, the bail application may not have been strongly opposed. It is also true that a number of cases are pending against the respondent - accused.

8. The evidence available on record, unequivocally, shows that the respondent-accused is suffering from HIV positive. He is taking treatment. In my considered opinion, this solitary ground of medical treatment is sufficient to maintain the order of bail in his favour. If he is allowed to be taken into custody, then the possibility of aggravation of the disease cannot be ruled out.

9. In the aforesaid view of the matter, in order to strike the balance between two competing contentions and considering the interest of justice and to avoid future possibility of giving threats to any of the prosecution witnesses or to prevent the respondent-accused from interfering with the prosecution evidence, following conditions shall take care of the apprehension raised by the applicant.

a] That the respondent-accused shall not enter into the Corporation Limit of Kalyan-Dombivili Municipal Corporation, except for the purpose of attending trial and he shall remove himself from the jurisdiction of the said Municipal Corporation immediately after adjournment of the trial.

b]The learned counsel for the respondent-accused submits that he would be staying in Thane and he will furnish his address to the Investigating Officer and also the Court and that he will report Thane Nagar Police Station every day between 3:00 to 5:00 p.m.

(V.C. DAGA,J.)